IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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R.S.A. No.4166 of 2004
Date of Decision:01.10.2007

Bhagwan Singh

.....Appellant

Vs.

Malwinder Singh and others

.....Respondents

CORAM:- HON'BLE MR. JUSTICE RAJESH BINDAL

Present:- Mr. Parminder Singh, Advocate for the appellant.

Mr. Ashok Jindal, Advocate for the respondents.

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Rajesh Bindal, J.

The plaintiff is in regular second appeal before this Court against concurrent finding of fact whereby suit filed by him is for injunction restraining respondents/ defendants from forcibly and illegally digging the water-course and from passing the water through his land as mentioned in the headnote of the suit.

Both the Courts below have concurrently found that the water-course was in fact already existing when the suit was filed. Though there was no such statement in the plaint filed by the appellant but still in evidence he could not dispute this fact and explained the same by saying that it was a private water-course. It has also come on record that the water-course is proved to be in existence for the last many years and that too a sanctioned one. Copy of Ex.DW1/A was proved on record to show the disputed water-course. Even the orders passed by the canal authorities regarding the warabandi and the dismissal of appeal filed by the appellant were also placed on record. Once it is found that the water-course was already existing, no relief could possibly be granted in a suit filed by the appellant/plaintiff restraining the respondents from digging the water-course as the relief prayed for was infructuous on the date of filing of suit. Accordingly, no fault can be found with the concurrent findings of fact by both the Courts below.

At this stage, learned counsel for the appellant submitted that

the land in question is a private property of the appellant and the same cannot be used for the benefit of any other person without compensating him. This Court will not opine on that issue as the same is not the subject matter of the appeal. Needless to add that in case the appellant has any right for compensation etc., on that account he can always claim the same in accordance with law.

Accordingly, the appeal is dismissed.

October 01, 2007 **(RAJESH BINDAL)**
renu **JUDGE**